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BEFORE THE ARIZONA CORPORATIC

COMMISSIONERS

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Arizona Corporation Commission

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IN THE MATTER OF DISSEMINATION OF
INDIVIDUAL CUSTOMER PROPRIETARY
NETWORK INFORMATION BY TELECOM-
MUNICATIONS CARRIERS

Docket No. RT-00000J-02-0066

**Cox Arizona Telcom's Comments
on Staff's Second Draft -- Proposed CPNI Rules**

Cox Arizona Telcom, L.L.C. (Cox) submits its comments on Staff's second draft of proposed CPNI rules released August 13, 2004. Cox is encouraged that Staff is now proposing draft rules more closely modeled on the Federal CPNI rules. However, Cox believes that the second draft of CPNI rules still faces constitutionality issues because the rules do not contain an actual opt-out procedure. Moreover, the proposed rules require additional revision to better align the proposed draft rules with the Federal CPNI rules.

A. Rule 14-2-xx08 Changes the Opt-out Methodology to a de facto Opt-In Methodology

Rule 14-2-xx08, requires a carrier to obtain affirmative verification from a customer of that customer's opt-out approval to use CPNI. Specifically, the rule provides for a 180-day period within which carriers must verify a customer's opt-out choice. If that affirmative verification is not obtained after 180 days, carriers are no longer authorized to use, disclose, or permit access to that customer's CPNI. In essence, the rule changes the Opt-out methodology to a "delayed" Opt-in requirement. Cox believes that this approach may be subject to challenge on a similar basis as set forth *U.S. West, Inc. v. FCC* or *Verizon Northwest, Inc. v. Showalter* because it effectively eliminates a true Opt-out procedure. As stated in Cox's first set of comments, the legal landscape

1 presents substantial hurdles for adopting an “Opt-in” scheme, notwithstanding the 180-day Opt-out
2 time frame as proposed in the rule. Rule xx08 runs the risk of legal challenge because it is not
3 truly an Opt-out process but a so-called “hybrid” that reverts to an “Opt-in” requirement if
4 customer consent is not received within 180 days.

5 **B. Uniformity with the Federal CPNI Rules**

6 Cox reiterates its position on the Commission adopting the FCC’s CPNI rules, 47 CFR §
7 64.2001 *et seq.*, to ensure consistency across the multiple states and jurisdictions that many
8 telecommunications providers operate. Deviating from the Federal CPNI rules requires
9 telecommunications providers to expend additional funds and resources to ensure compliance with
10 two specific sets of rules across the different jurisdictions wherein they operate. Such deviations
11 also create quality control challenges due to the need to address different CPNI requirements in
12 different states. . Again, Cox believes that there is no need to deviate from the Federal CPNI rules
13 because Cox has not experienced any difficulties with its handling of CPNI under those rules.
14 Furthermore, Cox is concerned that the proposed rules adopt the federal CPNI rules – but no
15 amendments to those rules as they existed in 2002. That failure to keep up with the federal CPNI
16 rules exacerbates the problem of state CPNI rules that do not closely track the federal CPNI rules.
17 The Commission should not expend its resources arguing for a CPNI rule that is both inconsistent
18 with the Federal CPNI rule and subject to challenge (and probable rejection on appeal) due to the
19 lack of a true “Opt-out” option.

20 **C. Other Comments on the Rules**

21 **Rule xx04:** In Subsection A, the reference should be to “affiliates that do not provide
22 *communications*-related services.”

23 **Rule xx05:** In general, the notice information required by Rule xx05 (and Rule xx06)
24 should be refined to track the federal notice requirements. This reduces the need for multiple
25 notices to be prepared for multiple jurisdictions. For example, Subsection B.3 of Rule xx05
26 requires twelve-point or larger print. The FCC Rule 64.2008(c)(5) requires the type to be
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1 "sufficiently large.", but also provides some flexibility in the form of the notice, including font
2 size.


3 **Rule xx09:** Subsection A is missing the word "to" after "company" and before "make".
4 Cox recommends inserting the word "to" to make the sentence clearer.

5 **D. Conclusion**

6 The revisions outlined above would ensure that customer's CPNI is protected, yet without
7 running afoul of existing law. Cox looks forward to participating in the Commission's upcoming
8 workshop.

9 RESPECTFULLY SUBMITTED August 30, 2004.

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